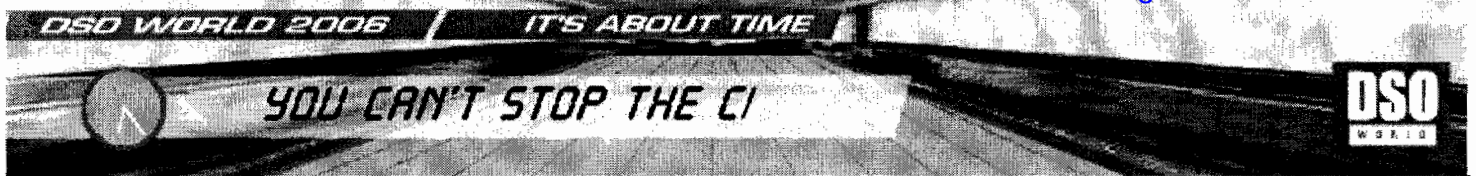


# Exhibit 41



EE Times: Latest News

## Music mavens change tune

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FOSTER CITY, Calif. — Struggling with a decline in its core business, the music industry is sending out mixed messages about future plans for digital content.

On the one hand, studios led by Sony BMG (New York) are moving aggressively to lock down their CD content with new copy-protection schemes in the face of widespread piracy that shows no sign of abating. On the other hand, they are embracing new services, especially in mobile, enabling a market where cell phones may soon surpass MP3 players as the dominant digital-music receiver.

"Respecting copyright and embracing technology is where we need to go," said Thomas Hesse, president of Sony BMG's digital group, at a keynote address to the Music 2.0 conference here last week. "Striking the right balance between making digital music available and getting adequately compensated for it is key."

In the end, bread-and-butter CD sales are expected to remain roughly flat while digital-music sales, an estimated \$350 million annual drop in today's sales bucket, could triple in the next five years, according to market research estimates.

Digital sales are "chump change compared to \$11 billion in annual CD sales, but that's where all the growth is," said David Card, senior analyst with Jupiter Media (New York). Annual CD sales have fallen by \$2.5 billion since their peak seven years ago, he added.

"We don't see the music business coming back to where it was in 1998. We have a long way to go to replace physical sales with digital sales," Card said.

### Stop the rippers

Keynoter Hesse promised that all Sony CDs sold in the United States would sport copy protection by the end of March; Europe and Asia will follow sometime later. The company has already conducted in-depth focus groups on at least two major CD releases that let users burn three backup copies and transfer songs to five other devices.

"The conclusion was [that] consumers accepted copyright protection," said Mathew Gilliat-Smith, managing director of First 4 Internet Ltd. (Oxon, England), whose copy-protection software is currently used on more than 30 Sony CDs.

The EMI Group is expected to announce similar plans soon, using Macrovision software. The other two major music studios — Universal Music and Warner Brothers — are evaluating technologies and waiting to see how Sony's moves play out.

"I'd be surprised if they don't follow suit," said Gilliat-Smith, whose company makes something less than 10 cents per disk for its copy-protection software.

Sony executives met privately with Apple Computer Inc. here last week in an effort to make it easier for users to transfer music from copy-protected Sony CDs to iPod players. It's unclear whether Apple would be willing to make the necessary tweaks to its iTunes software to streamline the file transfer process, given Apple's desire to distance itself from the music industry's efforts at copy protection.

Indeed, analyst Card said one early study showed that sales of copy-protected CDs might slump as much as 75 percent vs. today's unprotected disks. But "that has not been borne out" by the initial Sony market tests, he said.

Nevertheless, Card said he does not believe copy-protected CDs will have any significant impact on growing piracy and sluggish

CD sales. Although the percentage of adults who admit to illegally copying digital-music files has fallen from 15 to 8 percent in the last two years, the number of younger people who say they make illegal copies has held steady, at about 31 percent, Card said.

One widely cited report said the number of simultaneous peer-to-peer downloads at any moment over the Internet hit 8.5 million in July, an all-time record. Sony's Hesse pointed to one report saying that in 2004, ripping illegal copies was up 38 percent and burning them to a CD was up 13 percent over 2003 levels.

Young people see illegal copying as a legitimate reaction to the major studios, which they perceive as overpaid purveyors of poor-quality music, according to an informal panel of six anonymous men and women ranging from 19 to 28 at last week's conference. All six panelists said they get illegal songs from peer-to-peer services. Only two said they sometimes pay for digital music.

"You would be the odd one out if you didn't" share illegal music, said one panelist, who added that a friend who works for the FBI shares illegal copies with her. "The music industry is garbage right now," she said.

If members of Generations X and Y may be unafraid of sharing illegal songs, technology companies are operating in a climate of fear over legal liability, said Fred von Lohmann, a senior attorney with the Electronic Frontier Foundation (San Francisco). The recent Supreme Court case of *Grokster vs. MGM Studios* only increased the anxiety because it did not define the scope of existing legal liabilities for so-called vicarious and contributory copyright infringement. Instead, it added a third possible liability: inducement.

"If you are in the tech space concerned about the scope of liability, the upshot is you have continued legal uncertainty," von Lohmann said. "We need more clarity for consumer uses" of digital media.

In this environment, progress in digital media will be slow, von Lohmann said. Most established companies will move cautiously, striking partnerships with traditional studios and seeking their permission and licenses before embarking on new products and services that generally stay within existing guidelines. Echoing that view, executives from many companies noted with frustration the rise in complex legal contracts for every new use of digital-music files.

According to analyst Card, cultural shifts are more to blame than piracy for the music industry's slump. Traditionally, music accounted for less than 2 percent of all entertainment spending, but it has risen to 3 to 4 percent over the last 20 years. He attributed that fact to the rise of baby boomers, a large music-hungry demographic for whom rock is a cultural phenomenon. This group has bought several record collections in LP, cassette and CD versions, Card said. "Some of the industry's decline is about the end of the CD-upgrade cycle," he said.

## New avenues

Whatever the cause, the music industry is scrambling for new avenues for growth, many of them in the digital domain.

Sony's Hesse sketched plans for multiple product-release "windows" for premium, mainstream and budget versions of music on CD, Web and mobile platforms. The products include digital mixes of songs with videos and PDF artwork, ring tones, ringback tones and remixes, along with a broader variety of live-music versions, subscription services and more.

"We haven't figured out what all the new digital products will be yet. We are still inventing new ones," said Dan Weiner, vice president of strategy for the Sony BMG digital group.

Three new products are an effort to break out of today's monolithic model of 99-cent song downloads popularized by Apple's iTunes. "We've been selling everything for the same price. There's no market in the world like that," said Hesse.

One of the most significant new digital offerings will be over-the-air downloaded and streaming songs on cellular nets. Europe's O2 plans to launch such a service "in the next few months," said a representative of LoudEye Corp. (Seattle), which is developing the infrastructure for the service. Similar services are starting up now in Canada and Spain, and another is set to come online in India within a month.

A representative of Universal Music said the company set up a dedicated mobile group nearly two years ago. It has negotiated dozens of licenses of its content for ring tones and is now negotiating its first licenses for over-the-air music services, the representative said.

"All the major carriers have decided to do this and are evaluating different platforms for launches that could come late this year or early next year," commented Bill Valenti, president of startup Melodeo, a Seattle-based company that has its own software platform for hosting mobile music services.

Nokia has already launched three phones geared for mobile music and will roll out four more by the end of the year, according to another executive for a content aggregator involved in the launch of mobile music services in India.



"The big question in 2006 is to what extent carriers will keep these new mobile music services closed-walled gardens or open them up," said Sony's Hesse.

"The [music-ready] mobile phone will dwarf sales of portable audio players this year," predicted Brad Duea, president of the new, legitimate online-music service Napster.

#### **Look out at the low end**

Analyst Card took a more conservative view. "In 2010, there will be more music-capable cell phones than MP3 players. That said, MP3 players will still be a large, robust and exciting business," he said. "We don't think cell phones will be the dominant way people listen to music."

However, Card said that music-ready phones could cannibalize low-end, flash-based MP3 players, even as camera phones have eaten into the low-end digital-camera market.

"I think the next sweet spot is an MP3 player with a couple gigs' storage and a display, at \$50. You will see that coming in a year or two — and it could be built into a phone," Card said.

Only one of the six young people in the Music 2.0 conference's focus group expressed interest in buying or listening to music via a cell phone — because it would eliminate the need to carry both a phone and an iPod. Others were skeptical.

"The battery on my phone doesn't last long enough to download songs, let alone play them," said one woman.

Indeed, the limits of handsets and cellular networks remain issues for mobile media. Even voice conversations can be iffy on today's cell phones, so MP3-quality audio is no easy task.

Basic Java-enabled phones can find, sample and purchase songs in the service run by Telefonica in Spain today. For less than \$2, a 32-kbit/second clip is sent to the phone and a 128-kbit/s clip to the buyer's personal computer.

A 32-kbit/s audio rate is adequate for MP3-like quality on the phone, said Melodeo's Valenti, whose platform uses the AAC-Plus codec to compress a three-minute song down to about 700 kbytes. Secure Digital flash cards provide adequate storage for music and are becoming popular on camera phones, he said.

"We've done a lot of tests, and people consider it as good as the iTunes experience," Valenti said of his company's platform, which includes a search capability optimized for a handset's small display.

While some services are using the AAC-Plus codec and OMA-2 digital rights management (DRM) technology, others use Microsoft Corp.'s Windows media codec and DRM. "There is a real battle on that front," said Valenti. He would not disclose the royalty rates Melodeo seeks for use of its proprietary platform and DRM.

One audience member at the conference said he has worked on mobile music trials with cell phone maker Ericsson and that he had found 32-kbit/s audio too poor in quality and Bluetooth downloads too slow. Valenti countered that cell phones can download a three-minute song in 20 seconds over Bluetooth using Melodeo's software.

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